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THE EX-PRESIDENT

A New Counsel for Nixon's Defense

"We've got problems with that fellow . . . uh . . . uh . . ."
"Jaworski?"
"Yes."

Telephoning Martha Mitchell–style from seclusion in San Clemente, Richard Nixon could perhaps be excused a mental block in failing to remember the name of Watergate Special Prosecutor Leon Jaworski. As related by the recipient of the call, Republican Congressman Dan Kuykendall of Tennessee, Nixon thanked him for his longtime support and seemed concerned about his own future. "Do you think the people are going to want to pick the carcass?" asked the former President.

The metaphor was just as grisly but no more apt than Senate Minority Leader Hugh Scott's claim that Nixon had been "hung" and need not be "drawn and quartered." The plain fact is that the former President's own tapes provide prima-facie evidence that he was a participant in the Watergate cover-up conspiracy for which his aides have been charged with crimes. It is on that basis that Nixon does indeed have "problems" with Jaworski.

TIME has learned, however, that it is highly unlikely that Nixon will be charged with a crime until after the conspiracy trial of six of his former aides at least gets under way and its jury is sequestered. To indict Nixon before then and make him a defendant in the same trial would require a long delay while he prepared his defense. To indict him and seek a separate trial would generate new publicity that would make the selection of a jury for the trial of the others extremely difficult.

The way was apparently cleared last week for the conspiracy trial to begin on Sept. 30. The appeal of one of the defendants, John Ehrlichman, for a longer delay was turned down by Chief Justice Warren Burger of the Supreme Court. At the moment, Nixon is scheduled to be a witness at that trial, since a subpoena from Ehrlichman's lawyers was finally served privately on Nixon at San Clemente by a U.S. marshal. What action Nixon will take, if any, to avoid that appearance undoubtedly will be one of the first duties of Nixon's new personal Watergate defense lawyer, Herbert John (Jack) Miller Jr. The Washington firm Miller, Cassidy, Larroca & Lewin accepted the task after at least one, and possibly three law firms rejected overtures to defend Nixon.

Pun-Loving. Miller, 50, brings unique qualifications to his Nixon defense role. A Republican who campaigned for Robert Kennedy in his 1968 presidential primary drive, Miller had served as chief of the Justice Department's Criminal Division when Kennedy was Attorney General. There he became acquainted with many members of the present Jaworski staff, including James Neal, who will head the prosecution team in the conspiracy trial. A frequent guest at Kennedy's Hickory Hill estate, the gregarious, pun-loving Miller retained his Republican credentials by running, unsuccessfully, for Lieutenant Governor of Maryland in

1970. He was among the personal advisers summoned by Senator Edward Kennedy to Hyannis Port after the Senator's 1969 accident at Chappaquiddick.

Miller is well respected in Washington as a talented lawyer, although some say that he does not possess the trial skills of either Neal or former Nixon Presidential Defense Lawyer James St. Clair. At the Justice Department, however, Miller effectively led the prosecution of former Teamster Boss James Hoffa and Lyndon Johnson's Senate aide Bobby Baker.

Miller left the Government to set up his own law firm in 1965. He became intimately acquainted with Watergate defense problems when he represented former Attorney General Richard Kleindienst and Lawyer William O. Bittman. Miller plea-bargained with Jaworski to get Kleindienst off with a misdemeanor charge. According to a list of overt acts cited in the conspiracy indictment, Bittman had handled some of the hush money for his client, Watergate Burglar E. Howard Hunt. But Bittman was named only as an unindicted co-conspirator in the cover-up case.

Three Courses. If Nixon is indicted, three possible courses now seem most likely: 1) Nixon could seek a one-count charge from Jaworski, plead guilty to it, and then possibly be pardoned by President Ford; 2) he could plead *nolo contendere* as Spiro Agnew did, but it seems improbable that a judge would accept such a plea without a full admission of wrongdoing by Nixon; or 3) he could stand trial and if convicted then perhaps be pardoned by Ford.

While preparing for these or other eventualities, Nixon may have considerable federal financial help. President Ford last week asked Congress to provide Nixon with $850,000 as the initial payment on his pension and for transition expenses through next June 30. The total is in addition to S[illegible]

JUSTICE

The Amnesty Issue

Public debate continued last week over President Ford's plan for conditional amnesty for Viet Nam War resisters, which he had courageously proposed the week before at the convention of the Veterans of Foreign Wars (TIME, Sept. 2). The whole idea was quickly and predictably denounced as unfair by some conservatives, including the V.F.W., and berated as inadequate by some of the war resisters themselves, but Ford stuck to his guns. "I have made a decision," he declared in his press conference, "which I think is right and proper: no [unconditional] amnesty, no revenge, and ... individuals who have violated the draft laws or have evaded Selective Service or deserted can earn their way or work their way back."

This week, after receiving a set of proposals from Justice Department and Defense Department officials who have been studying the problem, the White House expects to announce the details of the plan. Presumably it will require a war resister to make some sort of statement of contrition and serve for a period in an organization such as the Peace Corps or VISTA. Attorney General William Saxbe acknowledged last week that the plan will not be welcomed by all of the estimated 50,000 war resisters involved. But the President is determined to "open the door to them," said Saxbe, adding that the plan "will make it as easy as it can be for them to return—but they are not going to be welcomed back as heroes."

The arguments over how to deal with the war resisters have long ranged, in the President's words, from amnesty to revenge. Organizations like the V.F.W., the Marine Corps League and the Non-Commissioned Officers Asso-